



Commission for  
**Communications Regulation**

## Response to Consultation

Regulation of the **.ie** domain.

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## 1 Executive Summary

The Commission for Communications Regulation (ComReg) is responsible for introducing regulatory frameworks necessary to ensure that Irish consumers are provided with high quality, leading-edge communications at competitive rates and that effective competition exists in the marketplace. ComReg’s responsibilities and efforts to date in this respect have been concerned with public telecommunications networks and the postal network, in response to the relevant national and European legislation.

The Communications Regulation (Amendment) Act 2007 (the Act of 2007)<sup>1</sup> amended the Electronic Commerce Act 2000, transferring to ComReg powers to make regulations affecting the management and administration of that part of the global Domain Name System assigned to Ireland, the .ie country code Top Level Domain (ccTLD). Currently the .ie ccTLD is delegated by ICANN<sup>2</sup> and IANA<sup>3</sup> to University College Dublin, for historical reasons that date back to the earliest days of the Internet, while the practical day-to-day administration of the domain is handled by an independent not-for-profit organisation, the IE Domain Registry Ltd. (IEDR).

On 27th June 2008 ComReg published its Consultation Paper to seek the views of interested parties on the steps ComReg now needs to take in furtherance of the objectives of the Act of 2007. There were 14 responses received from interested parties. This report now describes the outcome of that consultation and outlines ComReg’s conclusions and decisions. These are summarised as follows:

- ComReg commissioned a successful independent review and due diligence analysis on IEDR’s activities. Based on the conclusions drawn from those processes and based on the implementation of recommendations made therein, ComReg will, by way of regulation, appoint IEDR as the authority authorised to register .ie domain names in accordance with Section 32(4)(a) of the Act of 2007.
- IEDR will set up and maintain a Policy Advisory Committee (PAC) representative of all stakeholders. ComReg will approve the chairperson of the PAC.
- IEDR will continue to adopt the “managed approach” to .ie registrations.
- The Department of Communications, Energy and Natural resources will seek the delegation of the .ie ccTLD from ICANN. IEDR will then be designated as administrative and technical contacts for the domain.
- In the interests of the local Internet community and continuity of services, ComReg intends to safeguard the .ie domain data by implementing an effective escrow arrangement<sup>4</sup>. This ensures that in the unlikely event of IEDR failure, the critical data can be released, subject to ComReg authorisation, to an alternative registration authority that will provide continuity of services.
- ComReg therefore proposes to proceed with the implementation of the regulatory framework by appointing IEDR as the registration authority for an initial period of 12 months. This approach will then allow sufficient time for ComReg and IEDR to agree

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<sup>1</sup> <http://www.oireachtas.ie/documents/bills28/acts/2007/a2207.pdf> - relevant parts are included in Appendix A.

<sup>2</sup> ICANN – Internet Corporation for Assigned Names and Numbers, the organisation with responsibility for co-ordination of the Internet. – [www.icann.org](http://www.icann.org)

<sup>3</sup> IANA, the Internet Assigned Numbers Authority, maintain the data for the Internet root zone and co-ordinate any changes to it. IANA is part of ICANN.

<sup>4</sup> The precise mechanics of this material escrow and its potential release for use are still under study.

- and implement escrow and subsequently, to proceed to a longer term appointment once effective escrow arrangements have been put in place.
- ComReg will implement a monitoring framework and will participate in the PAC to keep abreast of activities in the marketplace.
  - Further regulatory measures may be considered in the future, if warranted.

The Internet world has emerged on a largely unregulated basis of consensus standards and openness and the above measures are in line with ComReg's aim of minimising ongoing regulatory intervention once identified issues are addressed and a suitable monitoring framework is in place and operating successfully. ComReg considers that this is the most appropriate approach and is in the best interests of Irish Internet and domain name users.

## 2 Introduction

### 2.1 General

The Commission for Communications Regulation (ComReg) has a responsibility for ensuring that Irish consumers are provided with high quality, leading-edge communications and that effective competition exists in the marketplace. ComReg's responsibilities and efforts to date in this respect have been concerned with the public telecommunications network and the postal network in response to the relevant national and European legislation.

ComReg's new statutory function is found in the Electronic Commerce Act, 2000, as inserted by the Communications Regulation (Amendment) Act, 2007<sup>5</sup>. This legislation transferred to ComReg responsibility for overseeing the management and administration of that part of the global Domain Name System assigned to Ireland, the .ie country code Top Level Domain (ccTLD).

On 27th June 2008 ComReg published its Consultation Paper to seek the views of interested parties on the steps ComReg needs to take in furtherance of the objectives of the Act of 2007. This report now describes the outcome of that consultation and outlines ComReg's conclusions and decisions.

The table below lists the respondents<sup>6</sup> to the consultation.

Respondent	Category
Antoin O Leachtain	Private Citizen
Brendan Murray	Private Citizen
BT Ireland	Telecommunications and Internet Service Provider
Chris Daly	Private Citizen
Déise Design	Web Development Company
Dennis Jennings	Private Citizen and member of ICANN board.
Digiweb	Telecommunications and Internet Service Provider
Eircom	Telecommunications and Internet Service Provider
IEDR	.ie Registry Operator
Irish Computer Society	National body for Information and Communication Technology (ICT) Professionals in Ireland
Irish Domains	Internet Service Provider
Omniserve.ie	Internet Service Provider
Paul Jakma	Private Citizen
WhoisIreland.ie	Online Web Directory and Search Engine

<sup>5</sup> <http://www.oireachtas.ie/documents/bills28/acts/2007/a2207.pdf> - relevant parts are included in Appendix A.

<sup>6</sup> The full text of the submissions to this consultation are also published in a supporting document – ComReg 09/01s

## 2.2 Consultation Issues

Consultation document ComReg 08/48 posed 17 separate questions, of which the last was an open invitation to comment on any issues not specifically addressed elsewhere. Respondents generally followed that format and accordingly this document is structured in the order of the original questions, with additional miscellaneous matters being covered under question 17.

For each consultation question posed by ComReg, the document follows the approach of repeating the main arguments put forward, including the actual consultation question. This is then followed by a summary of the public responses received and then a statement of ComReg's position on the issue in question, having taken account of respondents' submissions. The final section describes ComReg's initial regulatory framework, which may be modified or extended if the need arises from time to time.

*The purpose of this document is to provide information about the new regulatory framework for .ie. This information should not be considered to represent legal or commercial advice and readers should seek professional advice appropriate to their own circumstances. In particular readers should consult the Electronic Commerce Act 2000 as amended by The Communications Regulations (Amendment) Act 2007. No liability is accepted for any decision taken on foot of information included in this document. This document is without prejudice to the legal position or the rights and duties of ComReg to regulate the market generally.*

### 3 Consultation Items

#### 3.1 Security, Sensitive Processes and Technical Operations

ComReg, through an independent expert review that it commissioned, received guidance on detailed internal<sup>7</sup> processes, functions, precautionary arrangements and hardware items involved in the present operations of the .ie registry. ComReg was also guided by the experts' opinions on the degree to which these registry processes and functions meet reasonable expectations or could be further improved.

While this information must remain confidential for security reasons and/or because it deals with internal or proprietary company matters, it nevertheless addressed the key policy issues raised by the review report in its consultation paper.

ComReg considered that the right approach was to provide the detailed advice received to IEDR for its consideration and for action as necessary and in that respect it noted that IEDR's record of improvement over the last few years provides assurance that the necessary corrective steps will be taken as quickly as possible.

Nevertheless, ComReg proposed to formalise the position by directing IEDR to take all necessary steps to safeguard the .ie domain. ComReg would then, after a reasonable period, revisit any perceived shortcomings to see whether and how they have been addressed.

**Q. 1. Do you agree with ComReg that IEDR should be allowed and expected to review and address any perceived or reported shortcomings in its internal arrangements that might represent risks to the continued safe operation of the .ie domain?**

**Q. 2. Do you agree that a period of 12 months is a reasonable period to allow before a preliminary review of progress is made on any corrective action necessary, with a further 6 months allowed to finalise this work?  
If you do not agree, please provide your comments and alternative suggestions.**

##### 3.1.1 Views of Respondents: Security Sensitive Processes and Technical Operations

The majority of respondents agreed that it is reasonable that IEDR should be allowed to and expected to review any perceived or reported shortcomings in its internal arrangements that might represent risks to the continued safe operation of the .ie domain. Respondents understood the need to withhold sensitive information, notwithstanding that this made it more difficult for them to estimate the degree of risk and hence provide well-informed responses. Two respondents pointed out that when addressing these issues, IEDR should be guided by

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<sup>7</sup> The emphasis here is on "internal" and the features discussed in this section are only indirectly related (when at all) with the IEDR user community and the interfaces to that community.

international best practice<sup>8</sup> adopted by reputable bodies in Ireland and abroad. One respondent considered that ComReg, rather than IEDR, should address these issues by making specific regulations enforcing the necessary corrective action, noting (as did the IEDR itself) that ComReg may make regulations but not issue “Directions”. Another respondent was concerned that the lack of background information provided suggested that there may be some significant technical and procedural problems within the IEDR. In its response, the IEDR assured that “not only has there been no catastrophic failure to date but there has been no unplanned service outage of any significance to date”.

Two respondents shared similar concerns that IEDR must not be permitted to use commercial sensitivity to hide information from the Community and that there should be assurances that whatever remedial action is taken by IEDR follows the ‘best in class’ principles adopted by reputable bodies in Ireland and abroad.

There were mixed views on the time period in which IEDR should be allowed to take corrective action. Four respondents to this question agreed with ComReg’s proposed timeframe. One respondent stated that it was difficult to agree or disagree with ComReg without knowing the extent of any problem. Two respondents suggested that the initial 12 months period is too long and periods of 3 months and 6 months would be more appropriate. Other respondents considered that there should be continuous monitoring of progress on taking corrective action.

### 3.1.2 Commission’s Position: Security Sensitive Processes and Technical Operations

ComReg appreciates that respondents had some difficulty in answering the related questions due to the necessary omission of certain information and notes that this may have been taken in some cases as a signal that the risks are greater than they actually are. ComReg wishes to reassure stakeholders that what the expert review identified were potential problems or areas where improvements were required in order to comply with best international practice, rather than specific or immediate high-level risks of DNS failure. The public identification of even potential weaknesses could be deemed a security risk and – aside from company confidential matters – this was the main reason for the absence of specific information from the consultation document. As the IEDR noted in its response, there have been no “unplanned service outages of any significance to date”.

ComReg is mindful of IEDR’s day to day operations and therefore suggested an initial period of 12 months before review of its corrective actions so as not to overburden IEDR while the experts’ recommendations and the necessary regulations are implemented over the coming months. ComReg also notes that progress to date on corrective actions has been both swift and progressive. Some issues have already been resolved and others have been actioned and are to be completed well within the initial 12 months period. ComReg is conducting quarterly meetings with IEDR to review progress and acknowledges IEDR’s statement welcoming these progress reviews as part of an overall monitoring framework. ComReg therefore considers that based on progress to date, it need not specify any shorter timeframe for completion of corrective actions; progress can instead be assessed via ongoing monitoring, as suggested by some respondents.

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<sup>8</sup> One respondent suggested using CENTR ([www.centri.org](http://www.centri.org)) as a source of information.



Two of the respondent's questioned ComReg's legal basis for its proposal to issue a direction to IEDR to safeguard the .ie domain. ComReg agrees with the basic premise of those respondents that the development of regulations is the appropriate route to follow, when necessary. However, as noted in the previous paragraph, ComReg has encountered a high degree of co-operation from IEDR in respect of addressing identified weaknesses. Accordingly, the need or otherwise to include obligations to '*safeguard the .ie domain*' in secondary legislation will be carefully considered by ComReg in due course and consequently the making of regulations at this time and for this purpose would seem premature.

### 3.2 Corporate Governance

IEDR is, by reason of history, the current registry and is a private company; whose internal affairs are the sole responsibility of the organisation's governing body and its management team. Nevertheless, the .ie ccTLD is a valuable national resource and ComReg has an obligation to satisfy itself that the registry is managed in a way that fully meets the objectives of the relevant legislation. Measures that ComReg must take into account include, *inter-alia*, the possibility that at some point in the future, circumstances may deteriorate and a new or interim registry might be required.

To that end, ComReg undertook to carry out a confidential due diligence examination of IEDR with the aim of providing analysis, commentary and recommendations on, *inter-alia*, IEDR's Memorandum and Articles of Association, governance structure and high-level finances, insofar as these could have a bearing on the ongoing security of the .ie domain and/or protection of the interests of its users. After completion of this examination, ComReg proposed to:-

- Instruct IEDR to implement any key recommendations, that flow from the due diligence examination and/or from this consultation, that ComReg deemed appropriate and necessary.
- Provide to IEDR any additional more generic recommendations that ComReg deemed appropriate, after taking due account of viewpoints expressed by respondents to this consultation.

*Note: while the latter recommendations may not be binding on IEDR, ComReg anticipated that IEDR would recognise their value in harvesting wider public support for its services.*

**Q. 3. Do you consider it necessary for ComReg to take the steps proposed above to protect the consumer interest and the advancement of the .ie namespace? Please provide reasons for your answer.**

#### 3.2.1 Views of Respondents: Corporate Governance

The majority of respondents agreed that it is necessary for ComReg to take those steps outlined to protect the consumer interest and the advancement of the .ie namespace. A number also expressed concerns about the corporate structure of the current registry, mainly reflecting in one way or another, a degree of dissatisfaction with its responsiveness to .ie stakeholders. These remarks noted that IEDR is a monopoly provider of a service of national importance and the .ie ccTLD is a national resource. The general view of those respondents could be summed up by one such, who noted that while IEDR is a private company, it must be accountable, with mechanisms to ensure it behaves responsibly, in public accountability towards stakeholders, in corporate and legal matters, and in line with the wishes and expectations of the Community. However, more specific dissatisfaction was expressed at the composition and self-selecting nature of the IEDR board. The constitution and membership of the board were deemed to be important in ensuring that IEDR remains in touch and relevant to industry.

Another respondent suggested that if necessary IEDR should be required to change its legal structure to accommodate the above accountability, as a condition of its continuing as the .ie Registry.

Three respondents were not explicitly for or against ComReg's course of action. They made the following suggestions:-

- the .ie domain requires binding oversight rather than discretionary advice from ComReg;
- there should be industry and stakeholder representation on the IEDR board;
- directors' terms of service should be limited<sup>9</sup>.

One respondent described the proposed steps as commendable but not suited to ComReg's legislative mandate and that ComReg's primary role is to regulate, not to recommend or advise; the proposed steps would be appropriate for an advisory committee or the IEDR's board.

IEDR suggested that it would seem to be a matter for regulatory impact assessment to determine whether such steps are necessary, noting that current circumstances would suggest otherwise. As a registered company IEDR is subject to all the requirements of company law and its directors carry out their responsibilities in accordance with best corporate governance principles and practices. IEDR added that in fulfilling its mandate, it is mindful of the primary requirement of a registry to be equitable and fair to all groups and to weigh carefully the common and divergent interests of all stakeholders, especially users.

Several respondents demonstrated their concerns about these matters by returning to them in the general question 17 ("Any other relevant issues?"). One expressed concerns that this consultation paper does not go far enough in dealing with IEDR governance, suggesting that the registry goes about its business in a highly secretive manner. Another respondent, in response to the same question, is of the opinion that the Board and Management of IEDR appear to be resistant to and dismissive of an open, transparent and accountable framework for .ie policy development and appear to give undue weight to their responsibilities under corporate accountability rather than to any responsibility to the community. A third, pointed

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<sup>9</sup> Suggestions of 2 years and 4 years were stated as appropriate Terms of Service for Directors.

out that this is an opportunity for change and, if IEDR is to continue as the registry operator, then this should only happen in any permanent way after the organization transforms itself into a more open, transparent and accountable body that better represents the Internet Community. One respondent considered that it is the responsibility of UCD, which remains the organisation with overall responsibility for .ie, in consultation with the Community including ComReg on behalf of the State, to take action to rectify this situation.

Several respondents noted ComReg's remark that generic recommendations it proposed to forward to IEDR may not be binding and either expressed their views that the registry should implement them or else wondered what ComReg would do if they remained unimplemented. The registry itself indicated it would co-operate with ComReg in any appropriate review of its corporate governance arrangements and its board would – having regard to its fiduciary, legal and other responsibilities – carefully consider any recommendations arising therefrom.

### 3.2.2 Commission's Position: Corporate Governance

The overall objective of ComReg's due diligence exercise was to analyse the financial affairs and governance practices at IEDR and to make recommendations for corrective action where necessary. ComReg stated in its Consultation Paper that it will instruct IEDR to implement any key recommendations that flow from the due diligence examination and/or from this consultation that ComReg deems appropriate and necessary. This examination is now complete. The due diligence examination concluded that IEDR adopts good corporate governance practices and procedures and that the financial activities of the company are controlled and documented to a high standard. The report made some minor/medium priority recommendations and IEDR has undertaken to deal with these issues. ComReg now considers that the financial risk-management side is now closed, subject to conclusion of the outstanding actions.

Concerning corporate governance, ComReg notes the large degree of concern expressed by respondents related to accountability to stakeholders, including end-users. This concern partly relates to an inability, on the part of many stakeholders, to influence the IEDR board (in association with concerns about the alleged absence of any obvious guidance from the board itself – outside of financial matters) but also a lack of genuine consultation and stakeholder involvement at other levels. The latter issue is addressed in Section 5.3 below and ComReg believes that the proposed advisory committee and consultation processes will go a long way towards satisfying those concerns. ComReg is reluctant to intervene directly in respect of the board of a private company but has passed on its views, as informed by this consultation and the examinations carried out by its consultants, to IEDR. Accordingly, ComReg will monitor the end-result for consumers and other stake-holders going forward and use its legislative powers if it considers the outcome has failed to meet reasonable expectations.

Under legislation, ComReg may, by way of regulation, appoint an entity as the authority authorised to register .ie domain names. ComReg has satisfied itself through its external review and due diligence examinations that IEDR is financially and technically sound and operates under an acceptable code of governance. In those circumstances and in view of IEDR's co-operation with remedial action concerning the main recommendations made by ComReg, it would seem inappropriate and unnecessarily disruptive to proceed to the consideration of an alternative registry provider at this time.

ComReg therefore proposes to appoint IEDR as the authority authorised to register .ie domain names once these recommendations have been implemented. This appointment will be made by way of regulation, in accordance with the relevant legislation. Further details are set out in Section 4 - Proposed Regulatory Measures and Ongoing Monitoring.

### 3.3 Policy Formation, Outreach and Transparency

The general consensus in many internet organisations and in many ccTLD Registries (such as Nominet UK<sup>10</sup>) is that policy development should be undertaken as an open and transparent bottom-up process. It should also be a consultative process that takes account of the views of stakeholders and the local Internet community. This is best achieved through the establishment of an effective Policy Advisory Committee (PAC). This is considered essential by such bodies in the interests of good decision-making and also to ensure protection of the consumer.

An Irish PAC would be responsible for providing advice to the Registry's governing body on the non-operational aspects of managing the .ie domain name. This advice would not be binding but nevertheless the governing body would be expected to take utmost account of any advice received before making any decisions that affect existing policy or the future direction of the .ie namespace.

The constitution and terms of reference of the PAC would be published on the Registry's website and the ongoing activities of the PAC would also be published. The PAC would be chaired by a person approved by ComReg who represents the interests of the Irish Internet Community and .ie stakeholders. A PAC would create a bridge between the Registry's Board and the Registry's stakeholders which would foster a closer working relationship to the benefit of all concerned.

ComReg is aware that IEDR has previous experience of setting up a similar representative body. After discussions with ComReg, IEDR is currently taking steps towards establishing a new and more effective body and it is hoped that this will meet the needs outlined above.

**Q. 4. Do you agree that the .ie Registry should maintain a Policy Advisory Committee that is broadly representative of stakeholders and the Irish Internet Community in general and of whose opinion it takes utmost account? If so, how should this group be constructed and which matters do you consider it should advise upon?**

From time to time, changes in policy can have a significant impact on users of domain names and the Internet in general, even going beyond issues that can be resolved solely by a good PAC. ComReg considers that major policy issues such as these should be subject to a process of public consultation as part of a wider approach to open and transparent policy development.

<sup>10</sup> <http://www.nominet.org.uk/policy/develop/>

This consultation process should be clearly documented and all public consultations should be conducted in a formal and consistent manner.

**Q. 5. Do you agree that the .ie Registry should adopt a formal consultative process for major policy decisions? If so, what characteristics should this process have?**

### 3.3.1 Views of Respondents: Policy Formation, Outreach and Transparency

Most of the respondents agreed that the .ie Registry should maintain a Policy Advisory Committee (PAC) that is broadly representative of stakeholders and the Irish Internet Community in general and of whose opinion it takes utmost account. Some key points concerning the formation and remit of the PAC were made as follows:

- The approach taken by Nominet UK's Policy Advisory Body is favoured by several respondents.
- The PAC should be structured so that its members represent the various stakeholder interests and that its members should be appointed by the stakeholder groupings.
- Representatives on the PAC should include bodies such as the ISPAI<sup>11</sup>, the IIA<sup>12</sup> and registered resellers of the Irish Domain Registry. Equivalents of Nominet members that should be considered include IBEC, Government, Data Protection Commissioner etc.
- Consumers, through a consumers' body should also be afforded the opportunity of representation on the PAC.
- One respondent, ICS<sup>13</sup>, representing ICT<sup>14</sup> professionals and computer and internet users, considered that it should be a member.
- It is important that members of the PAC associated with individual hosting companies act or advise in everyone's best interest rather than their own.
- The areas of policy that should be covered include Registry/Reseller contracts, contract compliance, dispute resolution, best practice recommendations from ICANN/IANA and CENTR, WHOIS policy, service continuity and policies related to consumer protection and security as well as all material matters that have the potential to affect the reseller group and the general public.
- One respondent considered that the PAC must have mechanisms to appoint at least 2 people to the Board of Governance of the .ie Registry where they will have the normal fiduciary responsibilities of board members.
- PAC recommendations should be binding on the .ie Registry.
- The PAC should be able to consult directly with industry, stakeholders and consumers by invitation of submissions.
- The PAC should determine overall financial policy for the Registry – consistent with prudent financial management – and overall pricing policies.

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<sup>11</sup> Internet Service Providers Association of Ireland - <http://www.ispai.ie/>

<sup>12</sup> Irish Internet Association - <http://www.ia.ie/>

<sup>13</sup> Irish Computer Society – [www.ics.ie](http://www.ics.ie)

<sup>14</sup> ICT – Information and Communications Technology.

One respondent considered that ComReg, not IEDR, should maintain the PAC, adding that under legislation, ComReg is responsible for determining the rules for domain name registration which form the bulk of policy and that ComReg is not in a position to delegate that right to anyone else. Another considered also that ComReg should do this, if the ‘closed organisational structure of IEDR’ mitigates against the success of any PAC set up by IEDR. That respondent noted the failure of previous attempts by the Registry to implement a PAC but acknowledged that management styles and attitudes have changed for the better in recent years.

In its response IEDR stated that it had already given consideration to establishing such a body to supplement existing but less formal arrangements and would envisage consulting with stakeholders on terms of reference, membership and modus operandi. The objective would be to establish a consultative and advisory group to represent the collective views of the Internet community in relation to the operation of .ie.

The majority of respondents agreed that the .ie Registry should adopt a formal consultative process for major policy decisions and that the process should be open transparent and accountable.

Two respondents recognised that the PAC could play a role and that the consultation process should be similar to ComReg’s consultation process where objectives, submissions, discussions and decisions are published

One respondent suggested that if the PAC is successful then there is no need for a formal consultation process as policy would be developed with representative input from all stakeholders. Furthermore, for far reaching policy proposals the current legislation would seem to allow ComReg itself to decide if a wider consultation is required (and to organise it). Another respondent stated that the Registry may steward or manage this consultation process, but ComReg is legally responsible for it.

IEDR, in its response, stated that it does operate an informal consultative process already and that the PAC could formalise this process. However, another respondent considered that IEDR has in the past carried out public consultation on policy changes, only to ignore the received responses.

### 3.3.2 Commission’s Position: Policy Formation, Outreach and Transparency

ComReg notes the viewpoints expressed and in general they support the view that the Policy Advisory Committee would be of considerable benefit to the local Internet community. Representation of all stakeholders is critical to the success of the PAC and, as one respondent pointed out, it is essential that all views, not just those expressed by the reseller community, are considered. ComReg acknowledges IEDR’s willingness towards establishing a PAC and considers the information presented in its response<sup>15</sup> as a good representation of the stakeholder groups involved. ComReg will conduct further discussions with IEDR to ensure that all stakeholders are represented.

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<sup>15</sup> Please refer to ComReg Document 09/01s published in conjunction with this paper. See Appendix II of IEDR response.

ComReg agrees with the sentiment of the respondent who stated that simply duplicating the original unsuccessful model operated by IEDR would not be useful and considers that the constitution and terms of reference of the PAC must be strong and effective. Amongst other things, the new PAC must be chaired by an individual representative of the local Internet Community, who is independent of IEDR's executive and governing body. Furthermore, if the appointment of the chairperson is supported by the members and approved by ComReg, this will help engender the necessary public confidence.

ComReg notes that while some respondents stressed that any decisions of the PAC must be binding on IEDR and there was praise for the Nominet model, the decisions of the Nominet PAB are nevertheless not binding on the Nominet Board. Nominet's Policy Advisory Body's role is "to provide non-binding advice to the Board on the non-operational guiding principles regarding the oversight of the .uk domain name registry"<sup>16</sup>. ComReg considers that the Registry's executive and governing body must "take utmost account of" the decisions and recommendations of the PAC and that should provide the PAC with real influence over .ie domain policy. The consideration of PAC advice by the IEDR executive and board should be built into its risk register for contingency purposes and ComReg considers that it should not need to take stronger steps (via formal regulatory measures) unless the PAC turns out to be ineffective in practice.

Furthermore, ComReg does not believe there is a basis for the PAC to appoint members to IEDR's governing body, as proposed by some respondents, unless that facility is offered by IEDR itself. Any concerns expressed regarding IEDR's existing governing structures have been noted by ComReg and have been addressed, as appropriate, as part of the due diligence exercise discussed in the previous section.

ComReg agrees with the responses of IEDR and others that the PAC could facilitate a formal consultation process and that, for far reaching policy changes, ComReg may conduct its own public consultation. ComReg considers that the PAC should have its own website and all policy objectives, submissions and responses should be published in an open and transparent manner and that this approach will meet the desired objective.

ComReg proposes to work closely with IEDR over the coming months to draw up a list of potential candidates for nomination to the PAC and to define an initial constitution and terms of reference that would require approval by the PAC at its first meeting. ComReg will advise IEDR to continue with its work to establish the PAC as soon as is practicable.

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<sup>16</sup> Details on the Role of Nominet's PAB available at - <http://www.nominet.org.uk/policy/pab/>



### 3.4 Managed Registry Model

Since its inception, the .ie Registry has always operated a “managed” registry model. This means that applications for .ie domain names are vetted against pre-defined eligibility criteria<sup>17</sup>. Many people consider that this adds important value to .ie domain names and this is seen as a significant reason for choosing .ie. IEDR itself considers the managed system secure and reliable. A report<sup>18</sup> commissioned by MacAfee earlier this year ranked .ie as the sixth “least risky” ccTLD in the world and IEDR believes this is, in no small part, due to the managed system. Trading and speculating in managed domain names, which is a practice that adds no overall value, is almost non-existent, whereas these practices are commonplace in unmanaged registries.

The alternative is an unmanaged model, which is on a “first come-first served” basis without any restrictions. This model is more in line with common usage on the Internet, particularly with gTLDs such as .com. However, cyber abuse<sup>19</sup> is much more prevalent within unmanaged domains. With the unmanaged approach, domain names are worth their market value, essentially whatever someone is willing to pay for them.

Disputes about rights to domain names are more frequent in the unmanaged model as there are no eligibility criteria and the failure to register a domain or forgetfulness in re-registering a domain can quickly lead to abuses that have serious and expensive consequences for those concerned. In the context of consumer protection this is an important issue. ComReg considers that the managed approach creates a more secure environment for .ie domain names and the protection of .ie domain name holders is more important than the creation of a market in .ie domain names. Therefore, in ComReg’s view, the .ie Registry should continue to adopt the managed approach for the foreseeable future.

Furthermore, as managed domains are so few, this approach could provide the Irish Registry with a potential long-term unique selling point. It does this without disadvantage to Irish consumers who continue to have a huge range of alternative unmanaged domains from which to choose.

In any event, the fundamental approach taken to managing registration of .ie domain names is a legitimate concern for the Irish consumer and the industry.

**Q. 6. Do you agree that the Registry should continue to adopt the managed approach to .ie domain name registrations? If not, please provide your arguments and proposals for an alternative approach.**

<sup>17</sup> <http://www.iedr.ie/NamingPolicy.php>

<sup>18</sup> [http://us.mcafee.com/en-us/local/docs/Mapping\\_Mal\\_Web.pdf?cid=45044](http://us.mcafee.com/en-us/local/docs/Mapping_Mal_Web.pdf?cid=45044)

<sup>19</sup> For example, cyber-squatting. This is the practice of registering domain names with the explicit intent of using them to profit from the goodwill of a trademark belonging to someone else.



### 3.4.1 Views of Respondents: Managed Registry Model

Of the 13 respondents to this question, an overwhelming majority were in agreement with ComReg’s preliminary view and cited many additional explicit statements favouring the managed approach. No respondents were explicitly opposed to the Registry maintaining the managed approach although some respondents did point out some areas of registration policy that might need to be reviewed. In addition, one respondent strongly implied disagreement, stating that the managed approach is a “recipe for stagnancy in the .ie domain and suggested that “at a minimum there should be an unmanaged sub-domain in .ie”.

Another respondent suggested that this is a decision for ComReg, not the Registry as ComReg is the body with the power to institute regulations about the registration of domains. The same respondent considered that a wider consultation is necessary to reach a useful conclusion on this topic. One respondent highlighted the potential threat of the new liberalised system under ICANN where perhaps .irl or .ireland could be registered as unmanaged gTLDs that would, by virtue of popularity, simply swamp .ie.

IEDR provided an extensive listing of arguments in favour of the managed domain principle.

A factor which seemed to be of fairly wide concern was that of eligibility criteria for registration, especially for individuals. Not only was this raised by many respondents, with different examples being given but, as one respondent noted, getting this right is a critical component of scalability for a future growing registry. This respondent suggested that a simple mechanism that would greatly improve the efficiency of the registry is to permit “registration by assertion” – i.e. a registrant could assert compliance with specific rules in order to register but at the risk that incorrect claims may later result in the loss of the domain name.

### 3.4.2 Commission’s Position: Managed Registry Model

The views expressed by respondents to this question reaffirm ComReg’s preliminary view that the managed approach to registering .ie domain names should be maintained for the foreseeable future.

Some concerns around current registration policies under the managed approach were raised by respondents and ComReg considers that these could best be dealt with by the Policy Advisory Committee (PAC). In particular, the issue of identifying clear and simple eligibility criteria that are fair to all registrants and which will simplify the registry’s evaluation task, appears to be one which could benefit from early consideration by the PAC.

ComReg notes the idea put forward for increasing efficiency of registration by permitting “registration by assertion” and believes this may have value in speeding up registry evaluations, while removing the need for registry personnel to make difficult and potentially vexatious choices. As a result, there could also be an increase in the quantity of registrations, without removing the rights of the registry to reconsider cases that are subsequently challenged. ComReg proposes that this matter is also a suitable issue for consideration by the PAC.

ComReg notes the concern expressed regarding the introduction of new gTLDs which may have a national context to them such as .irl and .ireland. ComReg welcomes any

initiative that gives Irish registrants more choice but notes that if these are registered as unmanaged domains, they will still carry all the potential security risks evident in other unmanaged domains. This provides even greater impetus for IEDR and its reseller community to promote and develop the unique selling point that .ie enjoys as a managed domain.

### 3.5 Competition & Pricing

#### 3.5.1 Competition

A .ie domain name can be registered in either of two ways. A potential registrant can approach the Registry directly or they can choose to purchase their domain name from a reseller. IEDR recommend<sup>20</sup> registering through a recommended .ie reseller. Typically, resellers sell domain names as part of a bundled package which includes the provision of web hosting services, web site design, e-mail accounts etc. In many cases, the domain name is sold at a discount to capture business in the other areas mentioned and names sold in that way can often be obtained at a significantly reduced price compared to a direct registration with the Registry. Resellers do offer “domain only” registrations also, which are still much lower in price than the Registry’s direct sale price.

The Registry sets a price for direct registrations. It also sets the wholesale price for registrations to the reseller community. It does this without any external oversight. The maximum price the market will accept for registration or renewal of a .ie domain name is, the price charged by the Registry for a direct registration. Due to the monopoly nature of the ccTLD registration business at the wholesale level, the Registry should take the utmost care to ensure that it does not compete unfairly with its reseller community in the retail market. ComReg stated that it was its view that direct competitive selling would be incompatible with the Registry’s responsibilities under the current structures. In effect, the Registry has a responsibility to set pricing that promotes competition and innovation amongst resellers but does not put artificial or unfair constraints on them. This means that the Registry should provide its wholesale channels with enough scope and incentive to compete against each other, thereby nurturing a truly competitive environment.

If the Registry sets an unduly low ceiling on the price it charges for a direct registration, a proper competitive environment cannot be developed as that leaves less scope for reseller mark-up between the wholesale and retail prices and the principle of non-competition between the Registry and its resellers is then jeopardised. ComReg stated that its preliminary view was that the principle of non-competition is maintained provided the wholesale price of a registration remains significantly lower than the retail price.

**Q. 7. Do you agree that deep discounting of its own retail charges by the Registry to the point where it becomes a perceived competitor to its Reseller community is incompatible with the obligations of a ccTLD and should be prevented?**

<sup>20</sup> <http://www.iedr.ie/HowToRegister.php>

**Q. 8. Do you agree that the principle of “non-competition” is maintained as long as the wholesale price of a registration remains significantly lower than the published retail price?**

It could be argued that by offering direct registration services, the Registry is competing with its own resellers and, especially in view of its special status, that this practice could potentially be anti-competitive. In some countries, the Registry has withdrawn completely from the retail market. IEDR would argue that it is important for it to remain active in the retail market as a “registrar of last resort”. A “registrar of last resort” looks after domain name holders if no other registrar for some category of domain name emerges or whenever a reseller or registrar goes out of business. In the latter case, as a nominally disinterested or neutral party, the Registry can then act on an objective basis in the best interest of the domain name holders by quickly taking control of the orphaned domain names until these domain names can be transferred to another reseller. This usually happens when the domain name registration is to be renewed. ComReg considers that the “registrar of last resort” is a prudent and necessary function of the Registry, although safeguards may be needed in view of the unique status of the Registry with its visibility and control over key aspects of all .ie domains.

Furthermore, if an individual or organisation prefers a direct registration and they are willing to pay for it even at a higher price, then ComReg considers that this option should be available provided the customer has the information necessary to make such an informed choice<sup>21</sup>. Nevertheless, the facilitation of direct registrations, if coupled with significant registry retail discounts, could risk serious allegations of unfair competition by the Registry operator, who is operating from a privileged market position. ComReg believes that safeguards against such risks need to be enshrined in the terms of reference of the Registry Operator and will be giving due consideration to this, going forward.

**Q. 9. Do you agree that the registrar of last resort is a prudent and necessary function? If not, please explain your reasoning.**

**Q. 10. Do you agree that consumers should have the choice to register .ie domain names directly with the Registry?**

*Note: Questions 7, 8, 9 and 10 deal with competition issues and in their responses, some respondents provided answers to a combination of some or all of these questions as opposed to answering them separately or by making reference to a previous answer when answering a subsequent question. It is difficult to analyse the responses on an individual basis for each question without being unduly repetitive. Therefore the views of respondents are outlined in a generic manner while still capturing all the main points raised. The Commission’s Position is then specified for each individual question.*

<sup>21</sup> IEDR provides this information on its website. Please see: <http://www.iedr.ie/HowToRegister.php>

### 3.5.2 Views of Respondents: Competition

The majority of respondents agreed with ComReg's views on the issues addressed in questions 7 to 10. Some respondents rightly pointed out that IEDR operates as a monopoly in the wholesale market and on that basis, and considering that IEDR is a not-for-profit organisation, they argued that pricing policy should be based on the Registry recovering its (reasonable and efficient) costs.

Several respondents considered that IEDR should not be in the retail market at all, although some of these conceded it could be acceptable for them to continue provided IEDR retail price was high (e.g. €100). It was suggested that there was a fundamental conflict of interest in the Registry being both a monopoly wholesaler and a retailer.

One respondent considered that if ComReg believes that a 'non-competition' principle should be instituted, this would certainly require regulations in respect of the relevant EU legislation. It would be inappropriate to institute or maintain such a principle on a 'recommendation' or 'consensus' basis.

Another respondent compared the relevant issues addressed in this section with the concept of structural separation in the telecoms industry and concluded that domain name registration is a small and clearly defined industry and is therefore not a suitable candidate for structural separation. It is important therefore, that ComReg regulates and uses its influence to promote the interests of consumers, not the interests of resellers or the industry.

In its response, IEDR stated that it does not compete with resellers but provides more choice as well as operating in a registrar of last resort role. This view was backed up by another respondent who considered that in the interests of maximising consumer choice, IEDR should be permitted to continue to operate as a retail provider. Another respondent agreed with this, provided that the Registry actively discourages direct retail selling and that it publishes the reseller alternatives in an accessible manner.

With regard to its own pricing policy, IEDR presented arguments showing a steady increase over the years in the ratio of its retail to wholesale charges i.e. from €25/€50 in 2003 to €65/€20 currently. Thus, while the absolute margin has reduced from €75 to €45, the mark-up has increased from 2.5 to 3.25, thereby not only giving lower prices to end-users but also improving the wholesale/retail ratio. IEDR envisages continuing with its policy of reducing prices to its users consistent with its financial stability but always expects to maintain a reasonable margin between the retail and wholesale rates such that it should not reasonably be perceived as competing on price with the reseller community.

The majority of respondents considered the registrar of last resort to be a prudent and necessary function. One respondent supportive of this role, advised that this is a policy area that needs to be carefully considered by a Policy Advisory Committee so that safeguards against risks of serious allegations of unfair competition can be developed.

The IEDR argued that of 106,000 registrations in total, only 6% were direct registrations while 94% were handled by the reseller community. Furthermore, only 3% are currently directly registered while 97% are via resellers. The IEDR also stated that it does not advertise directly to the public nor run sales and marketing campaigns to encourage registrants to register

directly with it. It said its .ie namespace information and awareness advertising always directs intending registrants to the list of resellers on its web site.

Two respondents considered the registrar of last resort and direct registration to be unnecessary, based on the following arguments:

- A large number of European ccTLDs consider it unnecessary.
- Direct registration has been explicitly disallowed by ICANN for almost all gTLDs and is therefore an unnecessary function.
- The function may be necessary only in markets where there is little or no reseller/registrar network, such as Finland.
- If there were a need, it would be indicative of a market failure and it would be the market failure itself which should be addressed.
- The smooth operation of the ccTLD and the registration market around it being IEDR's prime concern, there is nothing that direct-registration can achieve except distract IEDR from that important goal.
- IEDR's accounts for 2006 show 5283 direct registrations (=8% of all), accounting for €343,000 or 14% of reported turnover that year, therefore IEDR has a direct financial interest in maintaining direct registration.

### 3.5.3 Commission's Position: Question 7 – IEDR competing with Resellers

It is clear from the responses received that pricing and competition in the .ie domain name market remains contentious and should be monitored and reviewed regularly. ComReg's due diligence analysis evaluated the basis used by IEDR to set prices and margins in both the retail and wholesale markets. This process involved analysing how prices are determined and how they feed into revenues and correspondingly into reserves after taking into account that IEDR is a not-for-profit company. It recognised that good governance requires a reasonable level of reserves to be maintained for contingency and investment in new technology and innovation and provided guidance to ComReg in that respect. The due diligence findings concluded that pricing and financial policy is reasonable and proportionate. However, ComReg considers it prudent to review these policies from time to time to ensure effective competition in the marketplace, accompanied by best value for consumers.

### 3.5.4 Commission's Position: Question 8 – Principle of non-competition

There were strong (and mixed views) on ComReg's assertion that the principle of non-competition is maintained as long as the wholesale price remains significantly lower than the published retail price. Some respondents rightly considered that prices should be in line with reasonable and efficient costs and ComReg agrees that this is a good target for wholesale costs, in the medium to longer term. ComReg notes one respondent's suggestion that any non-competition obligation (i.e. obliging IEDR not to compete) would require regulations but considers this not to be relevant; any competition-oriented steps towards IEDR that might be deemed necessary in future, would be restricted to ensuring it competes fairly at the retail level, taking account of its special position.

However, ComReg considers that the following points must be taken into account.

- IEDR has reduced the wholesale and retail price for each of the last 5 years.
- The number of direct registrations has decreased significantly.
- The number of Resellers in the market has grown significantly.
- The volume of registered domain names has grown exponentially.
- In relative terms, the margin between retail and wholesale prices has increased significantly.

Considering these factors and considering the findings of the due diligence analysis, ComReg concludes that the market is healthy and that competition is vibrant. Therefore, no market intervention on pricing is required. ComReg is cognisant that this situation could change in the future and therefore proposes to monitor activities closely. Should intervention be necessary ComReg will carefully consider any actions in the context of the relevant legislation.

#### 3.5.5 Commission's Position: Question 9 – Registrar of last resort

The majority of respondents agreed with ComReg's preliminary view that the registrar of last resort function is both prudent and necessary. As one respondent noted, its existence should provide comfort to consumers, in the protection of the existing domain names and the guaranteed ability to obtain new domain names. The most convincing argument put forward against retaining this safeguard is the existence of almost 100<sup>22</sup> possible registrars for .ie domains, coupled with the ease of transferring domains without the intervention (or knowledge) of the losing registrar/reseller.

ComReg notes the comments by one respondent that the Policy Advisory Committee should consider developing safeguards against potential serious allegations of unfair competition in the context of IEDR's role as the registrar of last resort.

As the long-term interests of .ie consumers and registrants must always be dominant, ComReg concludes that IEDR should continue to operate as a registrar of last resort for the foreseeable future. In arriving at that conclusion, ComReg is also persuaded by the low and apparently decreasing proportion of registrations being directly carried out by the registry, which minimises any negative impact on resellers.

#### 3.5.6 Commission's Position: Question 10 – Direct registrations

Many respondents put forward arguments in their responses to this question that were similar to those for the previous 3 questions. Whilst most respondents agreed that the registrar of last resort is necessary, they have concerns that the Registry is in competition with its resellers. ComReg therefore re-iterates the findings of the due diligence analysis, which found no uncompetitive practices at IEDR, and has therefore reached the following conclusions:

- Direct registrations offer consumers more choice. However, this option should be priced at a premium to ensure effective competition amongst resellers and between resellers and IEDR, if possible.
- Any future price changes should be targeted at the wholesale charges, leaving the direct registration retail charges unaffected.

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<sup>22</sup> Figure given by respondent. <http://www.iedr.ie/ListResellers.php> - lists 82 accredited resellers.

- The Registry should actively discourage direct retail selling and it should ensure that advertising (on its website and in any promotional materials) of the reseller alternatives is always easily accessible.
- The Registry's level of reserves, market share through direct registrations and pricing policy must be continually assessed as part of an overall monitoring framework.
- The Registry must pre-notify ComReg of any changes in price and/or pricing policy.

### 3.5.7 Pricing

The Act of 2007 states that ComReg may “*prescribe the fees (if any) to be paid on registering and renewing the registration of a .ie domain name*”. In 2003, the price of a direct registration was €125 (exclusive of VAT). In 2007 this price had reduced to €65. IEDR has delivered consecutive retail and wholesale price reductions for each of the last 5 years. In the same period, the number of resellers operating in the market has risen to over 80<sup>23</sup>. In that environment ComReg suggested that perhaps there was no need for an immediate price-related intervention, as such intervention could interfere with market dynamics and have an adverse affect on competition.

ComReg also suggested that it was important to monitor any changes in pricing to ensure no scope exists for abusive practices in the marketplace, adding that, based on the figures to date, there is no evidence of irregular or indiscriminate pricing practices.

When the price of a .ie domain registration is benchmarked against prices in other countries, two over-riding factors must be considered. Firstly, .ie is a managed domain, which carries an administration cost per application, to check<sup>24</sup> against eligibility criteria. ComReg considers that this extra cost is worthwhile in the interests of consumer protection.

Secondly, .ie domains appeal mainly to Irish individuals and organisations and therefore the market for .ie domain names is relatively small, especially when compared with Internet-wide gTLDs such as “.com”. Therefore, economies of scale are correspondingly more limited in the Irish market when compared to such markets and even compared to larger ccTLD markets such as the UK, Germany or France.

**Q. 11. Do you agree that the price of registering a .ie domain name seems reasonable, proportionate and competitive and therefore market intervention by ComReg is not currently necessary? If not, please explain your reasoning.**

<sup>23</sup> <http://www.iedr.ie/ListResellers.php>

<sup>24</sup> This involves manual effort, so scope for price reduction is affected.

### 3.5.8 Views of Respondents: Pricing

The majority of respondents agreed that the price of registering a .ie domain name seems reasonable, proportionate and competitive. However most respondents considered that the situation must be monitored, and reductions continued, based on the following:

- Prices should be benchmarked against European equivalents and reviewed on an annual basis at a minimum.
- Every effort needs to be made by the Registry to make its internal operations as simple and efficient as possible so that its costs, including those for checking eligibility requirements, are as low as possible.
- Pricing should be progressively and aggressively reduced, once IEDR has reasonable operating costs in reserve (a year/18 months being mentioned), while allowing also for planned investment in technology and security developments.
- A regular review of IEDR accounts, including cash reserves, by ComReg should be quite sufficient to establish that the price is in the appropriate range.
- The option for future intervention by ComReg should be kept open.

One respondent made a direct comparison with the retail price of registering a .fi domain name in Finland<sup>25</sup>, which is also managed, and concluded that the price of registering a .ie domain name is neither reasonable, proportionate nor transparent. Based on that comparison, the respondent suggested that an appropriate next step for ComReg would be to analyse the workings of an efficient Registry and use it as a basis to derive what the cost of the service would be if it were to be provided efficiently.

Another respondent also argued strongly that cost recovery should be the basis of charging. It noted the considerable growth in .ie registrations over the last 3 years and related this to the corresponding reduction in prices coupled with growth in the Registry's reserves over the same period. The respondent concluded that savings, due to increased volumes and automation, have only partially been passed on to registrars and consumers. The respondent felt that this provides strong evidence that .ie registrants have been "taxed" in recent years in order to remedy past problems with the financial security of the Registry. The same respondent was also of the opinion that recent price decreases have been largely reactionary – due to increased registration volumes in previous periods and because of demands from the registrar community.

IEDR, in its response, considered that the domain registration market and the reseller market are highly competitive and points out that IEDR competes with the gTLDs such as .com, .org etc. which have huge economies of scale and which are not subject to regulation. IEDR said that for such markets, where prices are readily compared, it is not evident that regulatory intervention in pricing is necessary or indeed sensible. As a not for profit Company limited by guarantee, IEDR's pricing policy is to price at a prudent minimum consistent with financial stability, taking advantage of economies arising from growth and of cost containment measures. The succession of price reductions over the past five years was given as evidence of the success of that policy.

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<sup>25</sup> The retail price of a .fi name for 3 years was quoted as €43.



### 3.5.9 Commission’s Position: Pricing

Some respondents made reference to the importance of minimising costs and striving for efficiencies in registry operations and indeed IEDR stated that it has delivered price reductions up to now by taking advantage of economies arising from growth and from cost containment measures. ComReg acknowledges these views and considers that price reductions should continue to be delivered as registration volumes grow and registration processes and procedures are made more efficient. As an example, one recent initiative by IEDR, was the introduction of multi-year registrations which should deliver more administrative efficiencies and further drive down the cost of registration. The benefit of such initiatives can already be seen in other markets as reported by one respondent where the price of a 3 year registration in Finland was quoted as extremely competitive for a similar sized market albeit, as illustrated in IEDR’s response<sup>26</sup>, that market penetration is significantly higher in Finland. Nevertheless, the administrative burden is reduced so some cost saving could be made going forward.

ComReg considers it vitally important that such initiatives are seen as normal investment for a progressive organisation and that the initial cost of such measures is not the only factor accounted for. IEDR could take advice from the PAC on the introduction of new technology and service enhancements, innovations and general advancements in the domain name space that would initially be introduced at a cost but would deliver further efficiencies downstream. The cost of eligibility checking, as a significant cost factor, could also be reviewed by the PAC and IEDR, to see how it can be reduced without significantly impacting the effectiveness of the managed domain model.

ComReg notes one respondent’s opinion that a review of accounts would provide sufficient oversight that charges are appropriate to the costs being incurred and that reserves are kept at a reasonable level. This is a reasonable assertion provided there are no accounting deficiencies in the financial reporting systems. The due diligence examination has found no such deficiencies and ComReg therefore proposes to review IEDR’s accounts at regular intervals, as part of its overall monitoring framework.

## 3.6 Handling Disputes and Improper Registrations

This section deals with disputes that may arise between two parties over the right to use a particular .ie domain name. It also covers situations where a registrant or reseller has a grievance with the Registry over its refusal to register a domain name in the first place and how decisions of the Registry can be appealed.

### 3.6.1 Disputes - “bad faith” registrations

IEDR operates a managed registry system and therefore few disputes about bad-faith registrations arise. Occasionally however, these do happen. These disagreements generally revolve around concerns about cyber-squatting, Intellectual Property issues, trademark

<sup>26</sup> See table in Appendix I of IEDR’s response in ComReg 09/01s. There are 178,419 registered domain names for a population of 5.3 million whereas Ireland has 101,596 registered domain names for a population of 4.3 million.

disputes or examples of a company's name and branding being misused. This is a fairly well understood problem in the domain name business and mature procedures exist to deal with such disputes. It should also be noted that a Registry is almost always a neutral third party in these cases. It has no vested interest in which registrant becomes the approved domain name holder, apart from entering the appropriate data in the Registry database and its WHOIS and DNS servers. In this respect the Registry normally seeks a ruling from an independent expert.

A number of TLD Registries and some ccTLD Registries use ICANN's Uniform Dispute Resolution Process (UDRP). In this scheme, an independent agency assesses evidence from disputing parties, the Registry, resellers or registrars and other relevant data sources such as trade mark registries. This independent agency is usually the World Intellectual Property Organisation (WIPO). Determinations by the independent agency are normally binding on both parties. However, the costs of UDRP are high and the time taken to reach a decision makes it somewhat unpopular.

For handling disputes in .ie concerning who should be the holder of a domain name, or when alleged examples of bad faith registrations occur, IEDR has adopted a localised version of UDRP called ieDRP<sup>27</sup>. This localised version still offers the same independence and objectivity provided by UDRP.

Although a few ccTLD Registries use the generic UDRP mechanism offered by WIPO, it is far more common that a ccTLD Registry develops its own local Alternate Dispute Resolution Process (ADRP) which tends to be both quicker and cheaper for the disputing parties. European ccTLD registries which use an ADRP in preference to the UDRP include Belgium, the UK, Austria, Sweden, Norway, Finland, Denmark, Italy and the .eu ccTLD.

ComReg considers that the UDRP approach may not meet the timelines of disputing parties and it may also be more expensive. In particular, resource constraints on individuals or small businesses that may have the clearest right to a domain name may drive them to consider the cost and effort of pursuing the matter excessively burdensome. This can be so even if the potential loss of good name and risk of other harm are very serious for the party involved. It might be more appropriate for the Registry to have an alternative local, impartial and independent procedure.

**Q. 12. Do you agree that the .ie Registry should consider developing an Irish Alternative Dispute Resolution Process (ADRP) or do you consider ieDRP (the localised version of UDRP) to be satisfactory? If the former, what characteristics should this ADRP have?**

<sup>27</sup> <http://www.iedr.ie/DisputeRes.php>

### 3.6.2 Views of Respondents: Disputes

All but one respondent considered the existing ieDRP process to be satisfactory, with the exception contending that having some kind of preliminary resolution panel might help to make the system more accessible for smaller rights holders.

IEDR in identifying the criteria for a complaint to be successful, acknowledged that this places a serious burden of proof on the complainant as failure to demonstrate even one of the three requirements will result in rejection. To be successful a Complainant must be able to demonstrate that : -

- a domain name is identical or misleadingly similar to a Protected Identifier in which the Complainant has rights; and
- the Registrant has no rights in law or legitimate interests in respect of a domain name; and
- a domain name has been registered or is being used in bad faith.

Four respondents, including IEDR, pointed out that there have been very few disputes in relation to the large quantity of registrations during the past 5 years (17 disputes since 2003 or about 3 per year). They felt that this indicates that the current process is generally satisfactory, largely because of the pre-vetting involved in the managed approach to registrations. Furthermore an ADRP would be unlikely to be economically viable given this current small level of disputes.

One respondent stated that the rules for registration should have a strong legal footing (by means of regulation) before an Irish ADRP could be instituted. This would be the best protection for consumer certainty and for avoiding time-consuming legal action. Finally another respondent suggested that the Policy Advisory Committee could be asked to review the current process and recommend amendments as appropriate.

### 3.6.3 Commission's Position: Disputes

Having regard to .ie users' rights and consumer protection, ComReg concludes that there is a general consensus amongst the majority of respondents that the current process is satisfactory and notes the comment by two respondents that it may not be economically viable to maintain a local ADRP given the current small level of disputes.

ComReg also considers that in view of the high cost involved in the process and the difficulty of mounting a successful complaint (as described at 3.6.2 above) that if the current level of complaints rises dramatically, the process should be reviewed at that time by the PAC in association with IEDR. In that respect, ComReg considers that there could be merit in examining (at that time) the suggestion of one respondent to include the facility of a preliminary resolution panel, which might be able to resolve less entrenched disputes.

3.6.4 Disputes - Rejected Registration Requests

The ComReg commissioned external review highlights that there is no formal process to follow whenever IEDR rejects an application. The reseller can however contact Registration Services and ask them to reconsider. If the original decision is upheld, the reseller can then appeal to senior management and ultimately to the IEDR Board. However, this process is not formalised.

ComReg considers that a more formal, but not onerous, process is needed. This process should be simple, yet impartial and should be clearly documented.

**Q. 13. Do you agree that the Registry should develop and document an open, transparent and formal process for rejected registration requests? If so, how should it be organised?**

### 3.6.5 Views of respondents: Rejected Registration Requests

There was broad consensus amongst respondents that there should be an open, transparent and formal process for rejected registration requests.

Some specific responses were:

- ComReg has an important role to play as the formal process should be documented in regulations.
- The process should allow appeal to the same body responsible for the DRP process to ensure consistency.
- There should be an internal formal IEDR reconsideration process. This should be followed by an external reconsideration process established by the Board, with input and advice from the Policy Advisory Committee, where the internal process fails to resolve the issue. It is the responsibility of the Board of the Registry to organise these processes.
- The appeals board should have representation from the .ie stakeholders, the Registry board and the Policy Advisory Committee.
- An appeals process should require an up-front fee sufficient to discourage spurious appeals. This might be refunded if an appeal is successful.
- The appeals process should not be onerous.
- IEDR considered that resellers' staff are familiar with its registration policies and its processes around queries or rejections. *Note: Two respondents supported this view, with one indicating that the informality also carries with it some useful flexibility of response.*
- IEDR indicated it is prepared to publish its processes, including the rejected registration appeals process, on its website.

### 3.6.6 Commission’s Position: Rejected Registration Requests

ComReg welcomes IEDR’s indication that it has no objection to publishing the rejected registration appeals process on its website. ComReg considers that this provides an excellent starting point to meeting users’ needs, as several respondents described the current process as informal and unclear. The Policy Advisory Committee should examine the process in due course and make recommendations on how, if at all, it could be strengthened, without losing the advantages that some users have identified.

ComReg also notes that some respondent’s favour a second-stage independent appeals panel represented by stakeholders, the Registry board and the Policy Advisory Committee and is therefore persuaded that this solution might provide a worthwhile appeals process. Nevertheless, as there are also indications that the need for such a body might be limited or intermittent, ComReg will discuss this option further with IEDR and the Policy Advisory Committee once all parties have considered the points made in response to this consultation.

### 3.7 Escrow of Registry Data

The objective of a data escrow scheme is to enable a third party to recreate the vital functions of an organisation’s IT infrastructure, given the necessary hardware. In the context of a TLD Registry, this involves the Registry database and other data derived from it, such as DNS zone files and a WHOIS database.

With an escrow arrangement, the Registry periodically sends a complete set of this data to a mutually approved, trusted and entirely independent third party, the escrow agent, who verifies the data and stores it securely. In the event of a catastrophe or business failure, the escrow agent can release the data to a selected replacement Registry so that the Registry operations can be resumed with minimum<sup>28</sup> delay. This arrangement is usually underpinned by a legally binding contract. IEDR does not have any such data escrow arrangements at present.

The Act of 2007 states that ComReg is “*at all times entitled to have access to all internet .ie domain name databases and any associated records*”. ComReg considers this measure was approved by the Oireachtas so as to ensure that ComReg can take all steps necessary to guarantee the ongoing continuity of services to .ie domain name holders, regardless of the standing of the incumbent Registry Operator. ComReg also firmly believes that an escrow arrangement is an essential step towards such assurance and is integral to ensuring public confidence in the long-term security of .ie. A catastrophic failure<sup>29</sup> of the Registry resulting in no access to .ie domain names could cause considerable damage to Irish enterprises as well as to the international reputation of Ireland as a sovereign state.

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<sup>28</sup> There is likely to always be some unfortunate delay, due to learning experience and set-up time. A key issue is that the former registry provider (or its agents or liquidator) should not be in a position to add to this delay.

<sup>29</sup> For example, bankruptcy, technical failure, force majeure, non-performance or any other unforeseen difficulties that might arise. Notwithstanding, ComReg believes there is evidence that IEDR is a solid company with significant financial reserves and has identified nothing to suggest that any major risks exist to the operation of the registry in the foreseeable future.

**Q. 14. Do you agree that it is essential to establish full and effective escrow arrangements for the .ie Registry to ensure continuity of service in the event of Registry failure? If so, on what basis and to what extent do you consider that an escrow agreement should be introduced?**

The subject of escrow is garnering much attention in the domain name business and is an active topic of discussion at ICANN. If escrow arrangements were to be introduced in Ireland, then the question of applying them to resellers as well as to the Registry might need to be considered.

It is ComReg’s view that escrow for resellers is not currently required, as there are many resellers to choose from and the cost of setting up such an arrangement might be prohibitive, burdening existing resellers unnecessarily and creating a barrier for new entrants to the market. Furthermore, fall back arrangements already exist, such as Registry-provided “registrar of last resort” (See Section 3.5 above) to provide additional security and peace of mind in the event of reseller failure.

**Q. 15. Do you agree with ComReg that there is not a current need to introduce escrow arrangements for registrars/resellers for the foreseeable future?**

#### 3.7.1 Views of Respondents – escrow

The majority of respondents were in favour of an escrow arrangement to ensure that continuity of service can be guaranteed, regardless of the disposition of the registry provider. One respondent insisted that this arrangement should be instituted by regulations rather than by private contract law. Other respondents considered that escrow should extend to including domain and zone information, WHOIS data and even essential accounting data that might be needed by a replacement registry to continue operations (e.g. renewal registration dates etc).

One respondent raised concerns that escrow, in itself, is not a sufficient protection measure and suggested that additional enhanced technical contingency and data redundancy measures are needed.

Only one respondent was explicitly against the concept of escrow, on the basis that the risks can all be addressed through technical means within IEDR. The same respondent also considered that it is inconceivable that IEDR would be allowed to fail and, as the State should have the means to prevent any failure, escrow is pointless. Therefore it considered that energy should be expended on oversight of IEDR instead.

IEDR, in its response, provided a summary of technical measures already in place to ensure continuity of services and considered the risk of disruption to DNS services for .ie domains as “infinitesimal”. IEDR stated it has no difficulty in principle arranging “access to all Internet .ie domain databases”, by ComReg, as provided for in the legislation, subject to this being on a basis that protects the property rights of the company and its registrants in the databases.

Another respondent, who strongly supported the need for escrow, also agreed that the fallback arrangements triggered by various levels of IEDR failures should give priority to the stability of the DNS operations, and should protect, as far as possible, the commercial interests of IEDR Ltd. Furthermore, this respondent also pointed out that the arrangements for continuing DNS operations must not be susceptible to blocking by a Liquidator or Examiner and strict limits must be placed on the time allowed for any Liquidator or Examiner to get alternative commercial arrangements in place.

With regard to escrow arrangements extending to resellers, many respondents agreed with ComReg's preliminary view that this was not necessary and no respondents were explicitly in favour of it. One respondent pointed out that the technical and contact information for each .ie registrant is already held by the Registry and therefore, even in the event of registrar/reseller failure, the domains will continue to operate as normal and the Registry will be in a position to contact registrants to advise them to change registrar.

Two respondents considered that this issue may need to be revisited in the future as .ie grows.

### 3.7.2 Commission's Position - Escrow

IEDR, as a going concern, administering a national resource, has an obligation to protect its own interests and those of its stakeholders and users and on that basis it should have a business continuity plan and disaster recovery arrangements in place that accords with international best practice and good governance. Indeed ComReg has considered those arrangements in place at IEDR, through its independent review, and has concluded that they are more than adequate notwithstanding some low/medium priority improvements that have been highlighted to IEDR. IEDR has already taken steps to implement these improvements.

ComReg also agrees with the view of the respondent who felt it was inconceivable that the registry service could be allowed to fail and, having being given responsibility for the .ie domain by the State, believes it has a duty to ensure this continuity of service, on behalf of the State, .ie stakeholders and the wider Internet community. Therefore an escrow arrangement must be considered a fundamental requirement as ComReg cannot simply rely on or hope for IEDR goodwill in the unlikely event of registry failure.

In its response, IEDR stated that it has no difficulty in principle in arranging access to the databases, as provided for in the legislation, on a basis that it protects the property rights of IEDR and the registrants in the databases.

ComReg's view is that the creation of escrow arrangements for the relevant databases is necessary to promote public confidence in the .ie domain registry and that it will be possible to develop such escrow arrangements in relation to the relevant databases without prejudicing the ownership rights in the databases.

ComReg therefore proposes to proceed with the implementation of the regulatory framework by appointing IEDR as the registration authority for an initial period of 12 months. This approach will then allow sufficient time for ComReg and IEDR to agree and implement escrow and subsequently, to proceed to a longer term appointment once effective escrow arrangements have been put in place.



ComReg considers that this is the best approach towards promoting public confidence in the .ie domain.

### 3.8 ComReg’s approach to Regulation

The Act of 2007 conferred on ComReg significant new powers in relation to the regulation of the .ie domain. The existence of this legislation of itself means that the Oireachtas has already considered and made provision for implementation measures to be carried out under it – including the adoption of secondary legislation – as appropriate.

The Internet world has emerged on a largely unregulated basis of consensus standards and openness and ComReg’s focus is therefore to ensure that any steps it might take in furtherance of its obligations are reasonable and proportionate.

ComReg’s aim is to minimise ongoing regulatory intervention in this area once any identified issues are addressed and a suitable monitoring framework has been put in place. The aim of this monitoring framework is primarily to ensure ComReg is well-placed to identify any future risks but it may also contribute to providing data that can complement ComReg’s role of providing market statistics to decision makers and the public. ComReg considers that such a light approach is the most appropriate one and is therefore in the best interests of Irish Internet and domain name users.

**Q. 16. Do you agree with ComReg's objective of minimising ongoing regulatory intervention in this area as soon as any identified issues are addressed and a suitable monitoring framework has been put in place?**

#### 3.8.1 Views of Respondents: ComReg’s approach to Regulation

All respondents to this question agreed that ComReg should minimise ongoing regulatory intervention in this area, though one added that “systemic failures may require far-reaching changes” and another felt that before standing back, ComReg should “institute appropriate regulations that are easy to understand and enforce and that protect consumers”.

Many respondents did stress the importance of a suitable monitoring framework and of ongoing oversight of the .ie domain. One respondent noted that ComReg’s stance regarding the .ie domain name is different from its stance in relation to other areas of new technology where monopolies are involved, such as NGN<sup>30</sup>, where the dominant player is regulated to a high degree.

Another respondent considered that ComReg’s oversight should ensure that:

- the Registry is required to operate efficiently on a cost-recovery basis;

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<sup>30</sup> Next Generation Networks

- the Registry’s constitution and organizational structure is changed to ensure that proper registrar and other stakeholder accountability is established;
- a transparent and effective policy development process is implemented that is driven by registrars and other stakeholders.

IEDR, in its response considered it ironic that ComReg is seeking to regulate the activities of a managed registry, while the .com and .net activities, which are the source of spam, identity theft, credit card fraud and unsavoury practices such as cyber crime, warehousing of Internet addresses etc remain unregulated and outside the scope of the Regulator's focus. IEDR also stated that it is encouraged that ComReg's focus is to ensure that any steps it might take in furtherance of its obligations are “reasonable and proportionate” as it has a concern that such steps should not disadvantage the Registry in competing with those unregulated international competitors. Furthermore, IEDR considered that ComReg should carry out a formal Regulatory Impact Assessment before taking any action in relation to regulation of the .ie namespace.

### 3.8.2 Commission’s Position: ComReg’s approach to Regulation

IEDR raised concerns that its competitors (e.g. .com and .net) are not operating in a regulated environment and it is therefore encouraged that ComReg’s focus is to ensure that any regulatory steps taken are “reasonable and proportionate” in respect of the .ie domain. IEDR further suggested that a formal Regulatory Impact Assessment should be conducted before any regulations are implemented.

In its preamble to question 16, ComReg stated that the existence of primary legislation in this area means that the Oireachtas has already considered and made provision for any implementation measures to be carried out under it – including the implementation of regulations – as appropriate. Therefore the impact of regulation in this area has already received considerable attention. In respect of the initial regulatory framework as outlined in Section 4.1, ComReg considers that the regulatory measures proposed are both reasonable and proportionate and therefore do not warrant a formal Regulatory Impact Assessment.

Going forward, ComReg proposes to conduct quarterly meetings with IEDR. Initially, these meetings will focus on progressing the recommendations made by ComReg’s external review and due diligence examination. Once all major issues are addressed the meetings will then focus on more routine quarterly reporting on Registry activity, policy updates, disputes and appeals and any other matters deemed appropriate as set out in Section 4.2 - ComReg’s Monitoring Framework..

ComReg will also participate in the PAC, which it expects to contribute significantly to ensuring that consumer and other stakeholder concerns are properly addressed, thereby minimising the need for further intervention. These initiatives will inform ComReg on the need for further measures and ComReg therefore concludes that its preliminary view of minimising ongoing regulatory intervention should be maintained. The impact of any future regulatory measure will receive careful and due consideration as appropriate.

### 3.9 Other Issues

Respondents were invited to comment on any other topic or issue that they consider has not been addressed adequately or at all in this Consultation Document.

**Q. 17. Do you wish to comment on any other relevant issues which may bear on ComReg’s approach to regulation in this area? If so, please discuss these issues.**

#### 3.9.1 Views of Respondents: Other Issues

Five respondents had additional comments to make in respect of activities in the .ie namespace that were not explicitly addressed in this consultation paper. These can be categorised as follows.

##### 3.9.1.1 IANA Delegation

Two respondents pointed out that, as far as IANA and ICANN are concerned<sup>31</sup>, University College, Dublin is responsible for the .ie domain, not IEDR, noting that this situation is grossly unfair for IEDR and unsatisfactory, as UCD no longer fulfils this function. It also results in uncertainty for consumers and resellers. It could well result in the registration of domain names being undermined and the situation should be regularised as a matter of priority.

One of the respondents stated that the legislation clearly places this responsibility on ComReg and it needs to consider whether it is appropriate to nominate IEDR or whether it should nominate itself as a 'Sponsoring Organization'. It should consult on this matter before coming to a decision.

The other respondent considered that re-delegation to IEDR would simply copper fasten the status quo and make it significantly more difficult to enforce changes within that organisation. It argued that neither re-delegation nor naming of a permanent Registry should take place until the required changes<sup>32</sup> have been made within IEDR (or to any other organisation that might be constituted to fulfil the role).

##### 3.9.1.2 IEDR Governance

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<sup>31</sup> Please see <http://www.iana.org/domains/root/db/ie.html>

<sup>32</sup> Those changes included transformation of IEDR into a more open, transparent and accountable body, improved registrar-registry interaction model and standard EPP interface, introduction of contracts with SLAs and defined terms of service, registrant-registry agreement defining rights and responsibilities.

Comments made regarding governance in response to this question were dealt with under section 3.2.

#### 3.9.1.3 Reseller Agreements

Two respondents are concerned that there is no explicit contract between IEDR and its resellers that defines terms of service, service level agreements, or any other details that would be part of a normal commercial relationship. This places registrars in a difficult position as the product / service sold is not clearly defined e.g. Is a domain registration property, a licence or merely a technical service that can be withdrawn at any time? The same respondent also stated that the introduction of a contractual relationship could facilitate a registry/registrar model where the vetting process on applications could be moved from the Registry onto the registrars resulting in a reduction in duplication of effort which would lead to a reduction in .ie wholesale prices.

#### 3.9.1.4 Additional Comments

The following is a summary of other issues raised by respondents

- IEDR should replace its Reseller online interface with a more enhanced system supporting additional functions such as multi-year registrations and renewals. The present system also has the disadvantage that changes to the API made by IEDR could force all registrars to expend development and testing effort to maintain compatibility.
- The Registry should also have a list of words and or terms which are unacceptable for registration. The current situation leaves the Registry with the task of deciding, in the first instance, what is acceptable as a .ie domain name.
- Events like the Eubrowser.com “fiasco”, where a number of high profile trademarks and brands were cyber-squatted, must not be allowed to reoccur. The Registry must have a process in place to stop this kind of activity immediately and deter such activities. The Registry was apparently powerless to deal with this kind of cyber-squatting activity as it exploited registration rules.
- This consultation has not really considered the future role of the Registry in relation to new developments, or what its relation to industry and consumers should be. I think it is important to develop a broader vision, rather than simply concentrating on current requirements.
- There has been no consideration given to the cost of regulation to IE Domain Registry Ltd. and to the consumer.
- The Registry still has no legal, administrative or other status to act as the registrar.

### 3.9.2 Commission’s Position: Other Issues

#### 3.9.2.1 IANA Delegation

ComReg agrees with the sentiment of one respondent that retaining UCD in the role of Sponsoring Organisation would be unsatisfactory considering that it no longer fulfils this role. The .ie resource is a national one, as acknowledged by IEDR in its response. ComReg, after careful consideration, and after discussions with the relevant parties, believes that the role of Sponsoring Organisation should be transferred to a public organisation and that the most appropriate such entity is the Department of Communications, Energy and Natural Resources (DCENR).

The .ie management framework would then be consistent in that:-

- ComReg, after consultation with the Minister, could appoint IEDR as the registration authority. Such an appointment would accord with the objectives of the legislation.
- DCENR (as Sponsoring Organisation) could then confirm IEDR as the Administrative and Technical Contacts for the .ie domain in the IANA database.

This solution would provide clarity of responsibilities for the local and wider Internet communities.

The DCENR will now progress this matter with the relevant parties.

#### 3.9.2.2 Reseller Agreements

Two respondents raised concerns about the absence of reseller agreements between IEDR and its resellers. IEDR has notified ComReg that it is in the process of drawing up such an agreement and ComReg will monitor progress on this initiative as part of its overall monitoring framework. ComReg suggests that the reseller agreement could be reviewed by the Policy Advisory Committee going forward.

#### 3.9.2.3 Additional Comments

The majority of other comments made by respondents related to registration policy and could be dealt with by the Policy Advisory Committee. Regarding the future role of the Registry in relation to new developments, ComReg has considered, *inter-alia*, innovations such as DNSSEC<sup>33</sup>, IDN<sup>34</sup> and IPv6<sup>35</sup> deployment as part of its external review process. ComReg will keep abreast of developments in these areas and will communicate as necessary on them to the PAC and the registry. The impact of any future developments will also be considered by the Policy Advisory Committee.

One respondent was concerned about the impact of any regulation on IEDR and on the .ie domain in general. ComReg will carefully consider the impact of any proposed regulation before imposing any regulatory measure.

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<sup>33</sup> Secure Domain Name System – <http://delhi.icann.org/files/presentation-sagar-11feb08.pdf>

<sup>34</sup> IDN - Internationalised Domain Names – <http://www.icann.org/en/topics/idn/>

<sup>35</sup> IPv6 – Internet Protocol Version 6 – <http://www.icann.org/en/announcements/announcement-14jul06.htm>

## 4 Proposed Regulatory Measures and Ongoing Monitoring

### 4.1 Proposed Regulatory Measures

The primary legislation empowers ComReg to make regulations (after consultation with the Minister for Enterprise Trade and Employment and other entities, as deemed necessary). This Consultation Process, the independent review and due diligence examination have provided ComReg with the necessary information to carefully consider its options and make regulations where necessary. The following is an initial summary of proposed regulatory measures.

- ComReg will appoint IEDR as the authority authorised to register .ie domain names for a period of 12 months, in accordance with Section 32(4)(a) of the 2007 Act. The regulation will outline the principal functions<sup>36</sup> and objectives<sup>37</sup> of the authority authorised.
- A longer term appointment will then be considered once effective escrow arrangements have been put in place.
- The appointment will be subject to the implementation of any other binding recommendations made by ComReg.
- Sections 32 (2) and 32 (6) of the Act of 2007<sup>38</sup> shall be commenced.
- A levy order will be raised in order to provide a fund to meet the expenses properly incurred by ComReg in performing its function with respect to the use of .ie domain names under the relevant legislation.
- In accordance with section 32(5) of the Act of 2007, persons who registered their .ie domain names before these Regulations came into operation are taken to have registered those names in accordance with these Regulations.

### 4.2 ComReg's Monitoring Framework

In its introduction to Question 16 and indeed as referred to frequently in this document, ComReg has outlined its plans to minimise ongoing regulatory intervention in the .ie domain market once any identified issues have been addressed and a suitable monitoring framework has been put in place. The aim of this monitoring framework is primarily to ensure that ComReg is well-placed to identify any future risks but it may also contribute to providing data

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<sup>36</sup> The principal functions of the Authority shall be to register and maintain a registry of all '.ie' domain names.

<sup>37</sup> The objectives of the registration authority in the performance of its functions, apart from those directly related to sale of domain names, shall be to facilitate easy comprehension, fairness, transparency, avoidance of deception, promotion of fair competition at registrar level and public confidence with respect to the use of such names.

<sup>38</sup> By S.I. No. 224 of 2007, dated 14<sup>th</sup> May 2007, the then Minister for Communications, Energy and Natural Resources brought into operation Section 21 of the Communications Regulation (Amendment) Act 2007, except for sections 32(2) and (6) of the Electronic Commerce Act 2000. These latter provisions create an offence and it was intended that they be brought into operation when the necessary regulations had been made. The relevant text of the legislation is as follows:

32(2) A person shall not use an '.ie' domain name unless the name is registered in accordance with regulations made under this section.

32(6) A person who contravenes subsection (2), or contravenes a regulation made under this section, is liable on summary conviction to a fine not exceeding €5,000.

that can complement ComReg’s role of providing market statistics to decision makers, industry commentators, interested parties and the general public.

ComReg has since considered recommendations made by its independent review and due diligence examination and has discussed these with IEDR. Those recommendations have either been implemented already or are actioned for implementation in the coming months.

ComReg's monitoring framework will, in the first instance, monitor progress on the implementation of those recommendations. Indeed, ComReg has already commenced quarterly meetings with IEDR to review progress.

Many respondents recognised the importance of ComReg maintaining ongoing oversight of the .ie domain. Once the initial recommendations have been implemented ComReg's role will be to oversee matters and it will pay particular attention to, *inter-alia*, the following areas:-

- Registration statistics - new registrations, renewals, rejections etc through an agreed template with IEDR.;
- Registration policy and the work of the Policy Advisory Committee;
- Appeals and disputes;
- The Registry's market share through direct registrations and activity in the reseller market;
- A periodic review of the Registry's accounts e.g. turnover, level of reserves, operating costs;
- Pricing policy and any proposed changes;
- International developments and trends in domain name markets;
- Innovation and the introduction of new technology and procedures;
- Security and consumer protection measures;

ComReg will work closely with IEDR in the coming months to implement the necessary reporting structures to facilitate this oversight so that this monitoring framework will keep ComReg well informed on whether or not further intervention in the .ie domain name market is required.

#### 4.3 Future Regulatory Measures

ComReg may introduce further regulatory measures in the future should these be warranted.

ComReg will inform its opinion on such matters through:-

- its monitoring framework;
- participation in the Registry’s Policy Advisory Committee;
- attendance, where appropriate, at international industry and policy events such as ICANN and EU Commission events.

Finally, ComReg will carefully consider the impact of imposing any regulatory measure before taking such action.





## Appendix A - Legislation

### Relevant Section of Communications Regulation (Amendment) Act 2007

#### Communications Amendment Act 2007

#### PART 4 Registration of Domain Names

- 31.— In this Part, ‘.ie domain name’ means the top level of the global domain name system assigned to Ireland according to the two-letter code in the International Standard ISO 3166-1 (Codes for Representation of Names of Countries and their Subdivision) of the International Organisation for Standardisation.
- 32.— (1) The purpose of this Part is to facilitate easy comprehension, fairness, transparency, avoidance of deception, promotion of fair competition and public confidence with respect to the use of ‘.ie’ domain names.
- (2) A person shall not use an ‘.ie’ domain name unless the name is registered in accordance with regulations made under this section.
- (3) The Commission may make regulations for the purposes of this section, but only after consultation with the Minister for Enterprise, Trade and Employment and such other persons and public bodies (if any) as the Commission thinks appropriate.
- (4) In particular, regulations under subsection (3) may do all or any of the following:
- (a) specify an entity as the authority authorized to register ‘.ie’ domain names;
  - (b) prescribe the form and manner in which an application for registration or renewal of registration of an ‘.ie’ domain name is to be made;
  - (c) prescribe the circumstances and manner in which, the terms on which and the period for which an ‘.ie’ domain name may be registered;
  - (d) prescribe the circumstances and manner in which, the terms on which and the period for which registration of an ‘.ie’ domain name may be renewed;
  - (e) prescribe the circumstances and manner in which an application for registration or renewal of registration of an ‘.ie’ domain name can be refused by the registering authority;
  - (f) empower the registering authority to revoke the registration of an ‘.ie’ domain name in specified circumstances;
  - (g) confer a right of appeal against—
    - (i) a refusal of an application for registration or a renewal of registration of an ‘.ie’ domain name, and
    - (ii) the revocation of the registration of such a name;
  - (h) provide for the procedure for hearing and determining appeals;
  - (i) prescribe the fees (if any) to be paid on registering and renewing the registration of an ‘.ie’ domain name and the time within which and the manner in which such fees are to be paid;

(j) provide for such other matters relating to registration as appear to the Commission to be necessary or desirable for the purposes of this section.

(5) The regulations shall provide that persons who have registered ‘.ie’ domain names before the regulations came into operation are taken to have registered those names in accordance with the regulations.

(6) A person who contravenes subsection (2), or contravenes a regulation made under this section, is liable on summary conviction to a fine not exceeding \5,000.

33.— (1) In order to provide a fund to meet the expenses properly incurred by the Commission in performing its function with respect to the use of ‘.ie’ domain names, the Commission may, by order, impose a levy on the entity authorised to register ‘.ie’ domain names in the State. The order shall specify the deadline for payment of such a levy.

(2) While an order made under subsection (1) remains in force, the entity shall, before the deadline specified in the order, pay to the Commission the amount of levy so specified.

(3) If the entity fails to pay a levy by the deadline fixed for payment, the Commission may, by proceedings brought in a court of competent jurisdiction, recover from the entity the amount of the levy as a debt due to the Commission.

34.— The Commission is at all times entitled to have access to all internet ‘.ie’ domain name databases and any associated records.

35.— (1) If the Commission considers it necessary to do so, it may, with the consent of the Minister, designate a person on an interim basis as the registration authority for the purposes of regulations in force under section 32.

(2) A designation under subsection (1) or subsection (3) is to be for a period not exceeding 12 months and is to be on such terms as may be specified in the designation.

(3) A designation under subsection (1) or this subsection may, with the consent of the Minister, be renewed for a further period not exceeding 12 months on such terms as may be specified in the renewal of the designation.

(4) This section has effect despite anything to the contrary in regulations in force under section 32.”